

IN THE CIRCUIT COURT OF HARRISON COUNTY, WEST VIRGINIA

RILEY NATURAL GAS COMPANY,
a West Virginia corporation;

Plaintiff,

v.

Civil Action No. 15-C-405-3

NORTHSTAR ENERGY CORPORATION,
a West Virginia corporation;

Defendant.

PLAINTIFF'S REPLY TO COUNTERCLAIM

Pursuant to Rule 12 of the West Virginia Rules of Civil Procedure, Plaintiff, Riley Natural Gas Company, by counsel, Lori A. Dawkins, Esq., Shawn A. Morgan, Esq., Lauren K. Turner, Esq., and Steptoe & Johnson PLLC, replies to the counterclaim included within the amended answer filed by Defendant Northstar Energy Corporation, as follows:

First Defense

The counterclaim, in its entirety, fails to state a claim upon which relief can be granted.

Second Defense

For its reply to the specific allegations set forth in the numbered paragraphs of the counterclaim, Plaintiff responds as follows:

Count One

1. Because paragraph 1 of Count One of the counterclaim makes no factual allegations, no response is required.
2. Plaintiff admits the allegations set forth in paragraph 2 of Count One of the counterclaim, which summarizes the relief requested in Plaintiff's Complaint.

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3. Plaintiff admits the allegations set forth in paragraph 3 of Count One of the counterclaim.

4. Because the counterclaim fails to set forth the entirety of the parties' Agreement, Plaintiff denies the allegations set forth in paragraph 4 of Count One of the counterclaim.

5. Because the August 1, 2008 Term Sheet is part of the parties' Agreement, Plaintiff denies that the Term Sheet is "associated with the Agreement." Plaintiff admits the remaining allegations set forth in paragraph 5 of Count One of the counterclaim.

6. Plaintiff denies the allegations set forth in paragraph 6 of Count One of the counterclaim.

7. Plaintiff denies the allegations set forth in paragraph 7 of Count One of the counterclaim.

8. Plaintiff denies the allegations set forth in paragraph 8 of Count One of the counterclaim.

9. Plaintiff denies the allegations set forth in paragraph 9 of Count One of the counterclaim.

10. Plaintiff denies the allegations set forth in paragraph 10 of Count One of the counterclaim.

11. Plaintiff denies the allegations set forth in paragraph 11 of Count One of the counterclaim.

12. Plaintiff denies the allegations set forth in paragraph 12 of Count One of the counterclaim.

13. Plaintiff denies the allegations set forth in paragraph 13 of Count One of the counterclaim.

14. Plaintiff denies the allegations set forth in paragraph 14 of Count One of the counterclaim.

15. Plaintiff denies the allegations set forth in paragraph 15 of Count One of the counterclaim.

Count Two

16. Plaintiff reasserts its responses to paragraphs numbered 1 through 15 of the counterclaim as if fully restated and re-alleged.

17. Plaintiff admits that it manages the marketing of producers' natural gas supplies; however, because the term "expert" is vague and subject to interpretation, Plaintiff neither admits nor denies the remaining allegations set forth in paragraph 17 of Count Two of the counterclaim. Plaintiff denies the allegations set forth in paragraph 17 to the extent it is alleging that Plaintiff at any time has physical custody and control of Defendant's gas.

18. Plaintiff denies the allegations set forth in paragraph 18 of Count Two of the counterclaim.

19. Plaintiff denies the allegations set forth in paragraph 19 of Count Two of the counterclaim.

20. Plaintiff denies the allegations set forth in paragraph 20 of Count Two of the counterclaim.

21. Because paragraph 21 of Count Two of the counterclaim makes no factual allegations, no response is required.

22. Plaintiff denies the allegations set forth in paragraph 22 of Count Two of the counterclaim.

23. Plaintiff denies the allegations set forth in paragraph 23 of Count Two of the counterclaim.

24. Plaintiff denies the allegations set forth in paragraph 24 of Count Two of the counterclaim.

Count Three

25. Plaintiff reasserts its responses to paragraphs numbered 1 through 24 of the counterclaim as if fully restated and re-alleged.

26. Plaintiff admits that Defendant attempted to terminate the parties' Agreement on December 7, 2015; however, Plaintiff denies Defendant is authorized to terminate the Agreement.

27. Plaintiff denies that Defendant is entitled to a declaration that its August 1, 2008 Agreement can be terminated, because the Agreement remains in full force and effect until September 2022.

28. Plaintiff denies that Defendant is entitled to any of the relief requested in the counterclaim or the "Prayer for Relief."

29. All allegations not expressly admitted are denied.

Third Defense

As investigation and discovery are ongoing, Plaintiff pleads the defenses of accord and satisfaction, arbitration and award, assumption of risk, contributory negligence, duress, estoppel, failure of consideration, fraud, illegality, laches, license, payment, release, res judicata, statute of frauds, statute of limitations, waiver, and all other affirmative defenses or avoidances which may prove applicable to the facts of this civil action.

Fourth Defense

The conduct of another or others than Plaintiff may have been the competent producing cause of Defendant's claimed damages, invoking the doctrines of comparative contribution and indemnification.

Fifth Defense

Plaintiff reserves the defenses of comparative negligence and comparative fault as these defenses may appear to be applicable based upon the facts in this civil action.

Sixth Defense

Plaintiff raises, so as not to waive, "all waivable" defenses contained within the West Virginia Rules of Civil Procedure.

Seventh Defense

Plaintiff did not commit any acts of negligence or any wrongful conduct which proximately caused or contributed to Defendant's alleged injuries.

Eighth Defense

Defendant is estopped by its own conduct and omissions from asserting any claims for damages or other relief from Plaintiff.

Ninth Defense

Plaintiff denies that it is in any way obligated to Defendant.

Tenth Defense

Defendant has suffered no damages. However, to the extent that Defendant demonstrates otherwise, Defendant has failed to take adequate steps to minimize, alter, reduce or otherwise diminish its damages, if any, with respect to the matters alleged in the counterclaim, and by

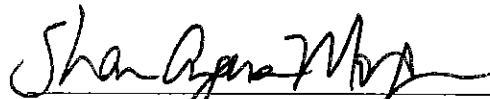
reason of the foregoing, Defendant is barred from the recovery of damages, or Defendant's damages must be reduced.

Reservation of Defenses

Because discovery and investigation are incomplete, Plaintiff reserves the right to assert additional affirmative defenses, including, but not limited to, those provided in Rule 8(c) of the West Virginia Rules of Civil Procedure, as discovery may later reveal to be appropriate.

WHEREFORE, Plaintiff respectfully requests the Court dismiss Defendant's counterclaim and award such other and further relief as the Court deems just and appropriate.

Dated this 21st day of December, 2015.



Lori A. Dawkins (WV State Bar #6880)
600 17th Street, Suite 1930 S
Denver, CO 80202
(303) 389-4300

STEPTOE & JOHNSON PLLC
Of Counsel

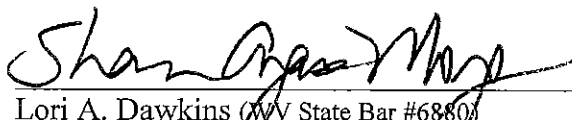
Shawn A. Morgan (WV State Bar #6640)
Lauren K. Turner (WV State Bar #11942)
400 White Oaks Boulevard
Bridgeport, WV 26330
(304) 933-8000

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CERTIFICATE OF SERVICE

I hereby certify that on the 21st day of December, 2015, I served the foregoing "**Reply to Counterclaim**" upon the Defendants in this civil action by first class mail – postage prepaid – in an envelope addressed as follows:

Stephen L. Thompson
Barth & Thompson Law Offices
Kanawha Boulevard, West at Berkeley Street
Charleston, WV 25302


Lori A. Dawkins (WV State Bar #6880)
Shawn A. Morgan (WV State Bar #6640)
Lauren K. Turner (WV State Bar #11942)

STEPTOE & JOHNSON PLLC
400 White Oaks Boulevard
Bridgeport, WV 26330
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